

M E M O R A N D U M

TO: Governing Board Members

THROUGH: Douglas H. MacLaughlin, Managing Attorney

FROM: Keith L. Williams, Sr. Attorney

DATE: July 1, 2011

SUBJECT: Special Magistrate Report and Recommendation regarding Palm Beach Townhomes

Background: William I. Donner (Applicant) filed Environmental Resource Permit Application No. 070619-12 (Application or ERP) on June 19, 2007, requesting authorization to fill 2.03 acres of a 2.58 acre parcel of privately-owned submerged land located in the Lake Worth Lagoon, and requesting authorization to construct and operate a surface water management system to serve 2.03 acres of a multi-family residential development known as Palm Beach Townhomes.

Despite the District's numerous requests to the Applicant for additional information concerning the application, the Applicant never submitted a complete application that would allow District staff to adequately analyze the impacts of the proposed project. Consequently on November 30, 2009, the District issued its Staff Report recommending denial of the requested ERP. The Governing Board voted to approve staff's recommendation for denial on December 10, 2009.

On January 6, 2010, the Applicant filed a Request for Relief under Section 70.51, Fla. Stat., the Florida Land Use and Environmental Dispute Resolution Act. This statute allows property owners seeking a development order or permit to initiate a proceeding to obtain a recommendation from a Special Magistrate as to whether the development order or permit is "unreasonable or unfairly burdens the use of the owner's real property." After the parties reached an impasse in mediation, an informal hearing was held on March 31 and April 1, 2011 before Samuel S. Goren, Special Magistrate. The Special Magistrate submitted his Order and Recommendation on June 10, 2011, finding that the District's denial of William I. Donner's ERP Application was not unreasonable or unfairly burdensome on the Petitioner's use of the subject property.

The Special Magistrate did not recommend alternative options in his Recommendation, explaining that, due to the absence of pertinent and critical data from the Applicant, the District could not make a technical review, leaving the Magistrate without sufficient information to determine what, if any, alternative options may be available to the owner. The Special Magistrate went on to suggest that Mr. Donner resubmit a permit application to the District along with all appropriate supporting information, including a mitigation plan which sufficiently addresses the environmental impacts of the proposed development project.

Pursuant to Section 70.51, Fla. Stat., within 45 days after receipt of the Recommendation, the District must either: accept, modify or reject the Special Magistrate's Recommendation. If the District accepts or modifies the Recommendation, it is to proceed to implement the District's denial of the subject ERP Application in the ordinary course and consistent with District rules and procedures.

Staff Recommendation: After consultation with the other involved governmental entities, (Palm Beach County and the Town of Palm Beach) District staff recommends that the District enter an order accepting the Order and Recommendation of the Special Magistrate as submitted and denying Permit Application No. 070619-12. Staff will timely review and respond to any resubmitted Application that addresses all applicable ERP criteria.

Staff Contact – Keith Williams, Office of Counsel, ext. 2791, Anita Bain, Environmental Resource Permitting Bureau, ext. 6866.